

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-207335.2

**DATE:** June 27, 1983

**MATTER OF:** ALB Industries, Incorporated--Request for  
Reconsideration

**DIGEST:**

1. GAO affirms, upon reconsideration, its prior decision in which it concluded that agency did not act arbitrarily in suspending firm on the basis that it was affiliated with another previously-suspended firm, because even after considering new evidence presented by protester most of the facts upon which the agency based its determination of affiliation remain undisputed.
2. Statement by one Government witness at suspension hearing that he believed two companies whose respective presidents were husband and wife were affiliated because "there could not be a separation of decision making between two companies, in two people who are husband and wife" is insufficient to show that suspension of wife's company was motivated by sex discrimination.

ALB Industries, Incorporated requests reconsideration of our decision in ALB Industries, Incorporated, 61 Comp. Gen. 553 (1982), 82-2 CPD 119, in which we found that the National Aeronautics and Space Administration (NASA) had a reasonable basis for suspending ALB from contracting with it because of the firm's affiliation with New World Construction Company, a previously-suspended firm.

ALB was the apparent low bidder in response to invitation for bids 10-0067-2, issued by NASA for modifications to a platform and the vehicle assembly building at Kennedy Space Center (KSC), Florida. However, following a preaward survey of ALB, NASA determined that the firm was affiliated with New World and since NASA had previously suspended New World and individuals involved with that firm, including Arthur L. Boschen, Jr., it also suspended ALB from contracting with the agency. NASA regulations provide

generally that award shall not be made to a suspended firm, see NASA Procurement Regulation (PR) § 1.603(a)(4) (1981 ed.), and therefore the agency rejected ALB's bid.

ALB now contends that it has obtained information not previously available which indicates that NASA's determination of ALB's affiliation with New World was based on an incomplete investigation and was in part the result of sex discrimination.

ALB filed its initial protest with our Office on April 30, 1982, when it was evident that NASA was not going to award it a contract under IFB 10-0067-2 because of ALB's perceived affiliation with New World. Two weeks later, on May 14, NASA's Assistant Administrator for Procurement issued a "Notice of Suspension" of ALB which was based on a finding that ALB and New World were affiliated. ALB then pursued its administrative remedies before NASA in tandem with our consideration of its bid protest. While we had no intention to interfere with the NASA administrative process, we considered our review of the matter appropriate to insure that NASA, in first suspending ALB after bid opening, did not do so arbitrarily to avoid awarding a contract to the low bidder.

Our decision was issued on August 9, 1982. On August 11, pursuant to ALB's request, NASA held a hearing on the firm's suspension. See NASA PR § 1.605-7. The administrative judge prepared Findings of Fact based on the testimony given at the hearing. These Findings were presented to NASA's Assistant Administrator for Procurement, who subsequently affirmed ALB's suspension.

In support of its request that we reconsider our decision, ALB has provided us with three documents: (1) a "narrative line-by-line answer" to NASA's May 14, 1982 "Notice of Suspension"; (2) a transcript of the hearing held on August 11 before the NASA Administrative Judge; and (3) the Administrative Judge's subsequent Findings of Fact. We note that the "answer," insofar as it seeks to rebut the factual bases for the May 14 suspension notice, consists of information within ALB's possession at that time but which was not presented to our Office until September 15, 3 months thereafter. We do not believe that this material, therefore, properly could be regarded as "new evidence." In any event, the "answer" does not dispute the facts as recited in the suspension notice so much as the conclusions which NASA drew from those facts.

ALB contends that the hearings and Findings of Fact provide new evidence indicating that NASA's investigation which preceded and led to its determination that ALB is affiliated with New World was incomplete. ALB states that testimony during the hearing revealed that the investigation of affiliation involved only the examination of public records and interviews with Government personnel--no interviews were held with representatives of ALB or New World. ALB contends that NASA, as part of its investigation, should have contacted representatives of the two firms and researched the means of financing and activating ALB. ALB notes that Patrick Air Force Base, Florida, also conducted an investigation of ALB's affiliation with New World and during that investigation an Air Force official met with Sharon L. Boschen, ALB's owner and president (and wife of Arthur L. Boschen, Jr.). ALB states that the Air Force investigation concluded that the two firms are not affiliated and the firm suggests that if NASA had done a more complete investigation it would have reached the same conclusion. ALB further states that the NASA report stated that Mrs. Boschen was Corporate Secretary for New World and thus there were common officers of the two firms, but at the time the NASA report was written Mrs. Boschen had resigned her position with New World.

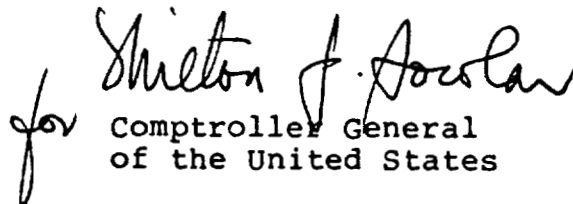
In a sense, the issue of the adequacy of NASA's investigative report has become academic as the result of subsequent events. Even though NASA did not interview the officers and employees of New World and ALB in conjunction with its investigative report, those individuals--as well as two Air Force employees--subsequently testified as ALB's witnesses at the administrative hearing. ALB, therefore, has had an opportunity to present to NASA those facts which it believes weighs in its favor after which, as we indicated above, NASA affirmed the suspension.

Moreover, the investigation as conducted by NASA resulted in Findings of Fact which were undisputed, other than the reference to Mrs. Boschen being an officer of New World. In our prior decision, we concluded that NASA's determination of affiliation based on these facts had a reasonable basis and one of the factors in that determination was a finding of common management between the two firms. See NASA PR § 1.600(b). Mrs. Boschen's resignation as Corporate Secretary of New World weakens the commonality of the two firms, but in our prior decision we noted that there were several other connections between the two firms, such as key employees of New World serving as officers or

employees of ALB, which are undisputed and provide a reasonable basis for NASA's finding that ALB and New World are affiliated.

ALB's allegation with regard to sex discrimination is based on the testimony of one of NASA's six witnesses at the administrative hearing--a NASA contracting officer at KSC--who stated that he did not know the elements of affiliation under NASA regulations, but he believed ALB and New World were affiliated because "there could not be a separation of decision making between two companies, in two people who are husband and wife." However, this testimony is not evidence of sex discrimination in that it indicates that this contracting officer would also find affiliation in a case where the wife had been suspended and her husband owned another company. Prejudicial motives cannot be attributed to the agency on the basis of inference or supposition and since ALB has not provided any factual substantiation of discrimination, we find this allegation is without merit. Health Management Systems, B-200775, April 3, 1981, 81-1 CPD 255.

ALB has failed to present information which would justify reversing our decision and we therefore affirm our decision that NASA had a reasonable basis for suspending ALB.

for Shirlon J. Fowler  
Comptroller General  
of the United States